

APPEAL NO. 93030

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). On April 29, 1992, a contested case hearing (CCH) was held in (city), Texas, with the record being left open until after receipt of a sworn statement on October 13, 1992, (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant, claimant herein, did not sustain an injury to her neck and back in the course and scope of her employment on (date of injury), while moving a box of parts.

Claimant requests the decision be reviewed by the appeals panel. We accept the appeal as requesting a review for sufficiency of the evidence. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

The issue framed at the CCH was, "[w]as CLAIMANT injured within the course and scope of her employment on (date of injury)?"

Claimant testified she was employed as a motor tester on an assembly line by , employer, in October 1991. It was not disputed that claimant had been hired on September 17, 1991 on a temporary basis with the understanding that such temporary employees were subject to being laid off on a last hired, first laid off basis. Claimant contends that on (date of injury), she was attempting to get a box of parts down from a stack of boxes which were stacked six high. Her testimony was that as she was trying to get the box down by sliding it down the side of the other stacked boxes she "pulled something in [her] back." Claimant testified she finished her shift and went home. October 25th was a Friday, and claimant testified the injury bothered her all weekend and on Monday, October 28th, she told her supervisor, (Ms. C) who sent her to the plant nurse. Claimant stated she informed both Ms. C and the plant nurse of her back and neck injury but this is disputed by Ms. C and the nurse. Both stated claimant only complained of a stiff neck. The nurse testified that claimant also complained of her wrist hurting. The nurse testified that she asked claimant "did you sleep wrong?" Claimant alleges that she told the nurse of a similar injury she sustained on October 7th. The nurse denies this and it is conceded the October 7th alleged injury had not been reported at that time. The nurse gave claimant some "Ben-Gay" and Tylenol and told claimant to check back if her condition did not improve. Claimant along with several other temporary employees, was laid off the afternoon of October 28th.

Claimant testified she was seen by Dr. W(the hearing officer refers to Dr. J and the record is not clear on the spelling; as no report or written reference is made to this doctor, he will be referred to as Dr. W) on November 4, 1991. As she was unable to have x-rays taken, claimant saw (Dr. F) on her own on November 4, 1991. It also appeared that claimant had been seen by (Dr. C) on October 9, 1991 for sinus headaches, on October 16,

1991 for frontal headaches and on October 21, 1991 where he notes claimant "has a long history of dizziness" due to a middle ear problem and refers claimant to Dr. F. This referral was prior to the alleged October 25th accident. Dr. F ordered a CT scan by Dr. H(Dr. H) which finds "degenerative findings as described with possible foramenal encroachment."

It is undisputed that the plant nurse had conducted a preemployment "physical" where the nurse had asked claimant if claimant had any previous physical problems. Claimant denied any back injuries, or medical problems. Claimant did concede she had been in an automobile accident on August 28, 1991 but stated the accident was not serious and she was only in the hospital ER for an hour or hour and a half. Carrier introduced an EMS report which indicated claimant was taken to the hospital on a body board in a semi-conscious condition. Later in the hearing, during closing argument, claimant amended her testimony regarding the accident by saying she had been hospitalized overnight for observation.

This case hinges largely on the credibility of the witnesses and whether claimant's version is believable. We have repeatedly noted that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Article 8308-6.34(e). Texas Workers' Compensation Commission Appeal Nos. 92721, decided February 18, 1992, and 92232, decided July 20, 1992. That the injured party is the only witness to an injury does not defeat a valid claim as the trier of fact is entitled to believe one witnesses testimony over another. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer saw and heard the testimony and observed the demeanor of the witnesses', including the claimant's. The hearing officer obviously did not assign great weight to the claimant's testimony and noted some inconsistencies in claimant's testimony in the statement of evidence. The hearing officer's determination that claimant did not suffer an injury to her neck and back on (date of injury) is supported by the nurse's testimony, the lack of medical documentation of the injury and inconsistencies in claimant's testimony. The hearing officer's decision is supported by sufficient evidence. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would we be warranted in setting aside the hearing officer's decision. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio, 1983 writ ref'd n.r.e.); In Re Kings Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Applying these standards of review, we affirm the hearing officer's decision.

Thomas A. Knapp

Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge